IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2007

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.P.Nos.17424, 17425, 16825, 16826, 22414, 23198 to 23201 of 2003, 2597 of 2004 & 24476 of 2005

M/s Sony India Ltd.,
Chennai-6. .. Petitioner in WPs 17424 & 17425/2003

M/s.Nokia India,
Private Ltd.,Chennai-6. ..Petitioner in WPs 16825 & 16826/03

Tvl.Trans Car India Pvt. Ltd.,
No.576, Anna Salai,
Teynampet, Chennai-6. ..Petitioner in WP 22414/03

MPL Cars Limited, Nandanam,
Chennai-600 035 ..Petitioner in WPs 23198 to 23201/03

Theni Glass House
14-b, Edamel Street,
Theni-625531 ..Petitioner in WP 2597/04

Madanlal
Proprietor
Mahaveer Mirror Industries
Chennai -2. ..Petitioner in WP 24476/05

-vs-

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The Commercial Tax Officer
Egmore-II Assessment Circle
Spur Tank Road, Chetpet
Chennai 600 031. ..1st Respondent in WP 17425 & 17426/03

The Commercial Tax Officer,
Anna Salai-III Assessment Circle,
"Sire Manson", 621, Anna Salai,
Cehnnai 600 006. ..1st Respondent in WP 16825 & 16826/03

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The Commercial Tax Officer,
Nungambakkam Assessment Circle,
Chennai. ..1st Respondent in WP 22414/03

The Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
Chennai-600 017. ..1st Respondent in WPs 23198 to 23201/03.

State of Tamil Nadu rep. by
its Secretary to Commercial Taxes
Department, Fort St. George, Chennai-9.

Special Commissioner and Commissioner of
Commercial Taxes, Commercial Taxes Department,
Ezhilagam, Chennai. ..Respondents 1 and 2 in WPs 2597/04 and 24476/05.

The State of Tamil Nadu
represented by the Secretary
to Government
Department of Commercial Taxes
and Religious Endowments
Fort St.George
Chennai 600 009

The Tamil Nadu Taxation Special
Tribunal
Chennai represented by its Registrar
Singaravelar Maligai
Rajaji Salai
Chennai 600 001 .. Respondents 2 and 3 in WPs 17424,17425,16825, 16826, 22414 and 23198 to 23201/2003

The Commercial Tax Officer,
Theni. ..3rd Respondent in WP 2597/04

The Commercial Tax Officer,
Vepery, Chennai. ..3rd Respondent in WP 24476/05

WP Nos.17424 of 2003 and 17425 of 2003

Writ petitions filed U/Art.226 of the constitution of India prayed this Court to issue a writ of Certiorarified Mandamus to call for the records of the third respondent and quash the impugned common order of the third respondent dt.30.4.2003 passed in O.P.Nos.969 and 970 of 2002 respectively and declare that the provisions contained in Entry 14 (vi) of Part D of the first schedule to the TNGST, Act 1959, as classifiable under Entry 8 Part G of the first Schedule and

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Entry 9 of Eleventh Schedule respectively to the said Act during the period from 27.3.2002 to 30.6.2002 and from 1.7.2002 respectively prescribing 20% rate of sales tax on sales of goods imported at Delhi and Mumbai and stock transferred and sold in Chennai, are violative of Articles 14,301 and 304 of the constitution of India and therefore void and unenforceable.

WP Nos.16825 and 16826 of 2003

Writ Petitions filed U/Art.226 of the constitution of India prayed to issue a writ of Certiorarified Mandamus, to call for the records of the third respondent and quash the impugned Common Order of the third respondent dt. 27.5.2003 passed in O.P.No.564 and 565 of 2003 respectively, and thereby declare that the provisions contained in Entry 14 (vi) of Part D of the first Schedule to the TNGST Act 1959, as contained and classified in Entry 8 of Part G of the first schedule and Entry 9 of the Eleventh Schedule respectively to the said Act during the period from 27.3.2002 to 30.6.2002 and 1.7.2002 respectively prescribing 20% rate of sales tax on sales of imported handsets of cellular telephones stock transferred from New Delhi and sold in Chennai, are violative of Articles 14, 301 and 304 of the constitution of India, and therefore void and unenfroceable.

WP No.22414 of 2003

Writ Petition filed U/Art.226 of the constitution of India prayed to issue a writ of Certiorarified Mandamus to call for the impugned proceedings of the third respondent passed in O.P.No.626 of 2003 dt. 18.6.2003 and to quash the same and thereby declaring serial No.9 of the Eleventh Schedule to the TNGST Act 1959 as introduced by the Tamil Nadu Act 22 of 2002 with effect from 1.7.2002 as ultra vires Articles 14, 265, 286, 301 and 304 (a) of the constitution of India.

WP No.23198 & 23199 of 2003

Writ Petition filed U/Art 226 of the constutition of India to issue a writ of Declaration declaring that S1.No.8 of Part -G to the first Sechedule and Sl.No.9 of the Eleventh Schedule respectively to the TNGST ACt 1959, introduced by Tamil Nadu Act 18 of 2002 as it stood between 27.3.2002 to 30.6.2002 and Tamil Nadu Art.22 of 2002 with effect from 1.7.2002 respectively as abinitio and as Ultra Vires Articles 14, 265, 286,Part -XIII of the constitution of India.

WP No.23200 and 23201 of 2003

Writ Petitions filed U/Art.226 of the constitution of India prayed to issue a writ of Certiorarified to call for the records on the file of the third respondent in O.P.813 land 814 dated 30.4.2003 respectively, and quash the proceedings of the third resopondent herein in OP 813 and 8141 dt.30.4.2003 respectively.

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WP No.2597 of 2004

Writ Petition filed U/Art. 226 of the constitution of India prayed to issue a writ of Certiorari calling for the records relating to the G.O.No.29, Commercial Tax dt. 27.3.2002 in so far as the Entry 8, Part G. of the first schedule to the TNGST Act with effect from 27.3.2002 in so far as the petitioner is concerned.

WP No.24476 of 2005

Writ Petition filed U/Art.226 of the constitution of India prayed to issue a writ of Declaration declaring entry 8 part G, first schedule till 30.6.2002 and entry 9, Eleventh Schedule from 1.7.2002 by TNGST Act, as invalid, illegal and unconstitutional and violative of Art.14, 19(1)(g), 301 and 304 (a) of the constitution of India in so far as the petitioner is concerned.

For Petitioners :: Mr.Arvind P.Datar
Senior Counsel for
Mr.R.Raghavan in
W.P.Nos.17424 & 17425/03

Mr.K.J.Chandran in
W.P.Nos.16825 & 16826/03

Mr.N.Murali in
W.P.No.22414 of 2003
Mr.N.Saiprakash for
Mr.N.Inbarajan in
W.P.Nos.23198 to 23201/03

Mr.T.V.Lakshmanan in
W.P.No.24476 of 2003

Mr.A.Thiyagarajan in
W.P.No.2597 of 2004

For Respondents in all WPs :: Mr.P.S.Raman
Additional Advocate
General assisted by
Mr.Haja Nazirudeen
Special Govt. Pleader (T)

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ORDER

D.MURUGESAN, J.

These writ petitions in batch are taken up together for disposal, as they raise common questions.

2. M/s Sony India Limited, Chennai is the petitioner in W.P.Nos.17424 & 17425 of 2003. It is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (for short, 'TNGST Act') and is an assessee on the file of the Commercial Tax Officer, Egmore-II Assessment Circle, Chennai. According to the

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petitioner, it is a fully owned subsidiary of M/s Sony Corporation of Japan and is engaged in the manufacture and sale of colour television sets, audio products and other consumer electronic products. It inter alia imports and sells LCD projectors, handy cameras, projection televisions, some models of car stereos and high-end audio systems. It imports the above goods from abroad at New Delhi and Mumbai and the imported goods are packed in accordance with the Weights and Measures Rules affixing MRP stickers, etc., and are despatched to a network of branch offices/warehouses located in various parts of India.

3. M/s Nokia India Private Limited, Chennai is the petitioner in W.P.Nos.16825 & 16826 of 2003. It is a registered dealer under the provisions of the TNGST Act and is an assessee on the file of the Commercial Tax Officer, Anna Salai-III Assessment Circle, Chennai. According to the petitioner, it is engaged in the business of importing and selling handsets of cellular phones from abroad at New Delhi and from New Delhi, the handsets are despatched to a network of branch offices/warehouses located in various parts of India. The handsets imported at Delhi are also stock transferred to the branch/warehouse of the petitioner at Chennai for sales within the State of Tamil Nadu.

4. According to M/s Sony India Limited and M/s Nokia India Private Limited, the goods classified under Entry 14(vi) and (viii) of Part-D of the First Schedule to the TNGST Act are liable for sales tax at the rate of 12% on first sales made inside the State of Tamil Nadu and only in case the imported goods classifiable under Entry 9 of the Eleventh Schedule are liable to tax at the rate of 20% on first sales inside the State of Tamil Nadu. On the basis of the clarification dated 21.7.2002 issued under Section 28-A of the TNGST Act by the Special Commissioner and Commissioner of Commercial Taxes, Chennai, if car audio systems, cordless phones, handy cameras, computer monitors and cellular phones are imported goods having foreign markings, then, when sold in Tamil Nadu, they will be liable for 20% sales tax under Entry 9 of the Eleventh Schedule to the Act. As the petitioners are liable to pay sales tax only at the rate of 12% in terms of Entry 14(vi) and (viii) of Part-D of the First Schedule, they had collected and paid sales tax at the rate of 12% on the goods imported from outside India at Delhi and Mumbai and stock transferred to Chennai and sold in Chennai and the demand for payment of differential tax had resulted in burden on consumers.

5. Aggrieved by the clarification dated 21.7.2002, they approached the Tamil Nadu Taxation Special Tribunal by filing O.P.Nos.969 & 970 of 2002 & 564 & 565 of 2004 praying to declare the provisions contained in Entry 14(vi) of Part-D of the First Schedule to the TNGST Act as classifiable under Entry 8 of Part-G of the First Schedule to the said Act during the period from 27.3.2002 to 30.6.2002 and as classifiable under Entry 9 of Eleventh Schedule of the said Act with effect from 1.7.2002 prescribing 20% rate of sales tax on the sale of respective imported goods from Delhi/Mumbai and stock transferred and sold in Chennai are violative of Articles 14, 301 and 304 of the Constitution of India and void and unenforceable.

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By orders dated 30.4.2003 and 27.5.2003, the Taxation Tribunal upheld the provisions of levy of higher rates of sales tax at 20%. Challenging the said orders, they have filed the above writ petitions seeking to set aside the orders of the Taxation Tribunal and for a consequential declaration to declare the impugned provisions ultra vires of the Constitution.

6. M/s Trans Car India Private Limited, Chennai is the petitioner in W.P.No.22414 of 2003. It is a registered dealer under the provisions of the TNGST Act and also under the Central Sales Tax Act, 1956 (for short, 'CST Act') and is an assessee on the file of the Commercial Tax Officer, Nungambakkam Assessment Circle, Chennai. According to the petitioner, it is carrying on the business as authorised dealers for sale of Mercedes Benz cars within the State of Tamil Nadu. It is effecting inter-State purchase of Benz cars and spare parts from M/s DAIMLERCHRYSLER India P.Ltd., Pune and has paid 4% CST and also issued 'C' declaration form to avail the concessional rate of tax. As the petitioner had effected first sale of Benz cars and the spares within the State, it has paid 12% tax and 5% surcharge. In addition to the above, it also paid 13% entry tax under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (for short, 'Entry Tax Act'). In terms of Entry 9 of the Eleventh Schedule of the TNGST Act for levy of 20% sales tax on the sale of imported motorcars, the business premises of the petitioner was inspected by the officials of Enforcement Wing on 3.5.2003 and 7.5.2003. On the ground that the inter-State purchase of cars and spares would attract tax under Entry 9 of Eleventh Schedule to the TNGST Act at the rate of 20%, they collected the differential rate of tax from the petitioner. On the ground that the petitioner would be compelled to pay tax under Entry 9 of Eleventh Schedule to the TNGST Act, it approached the Taxation Tribunal in O.P.No.626 of 2003 questioning the levy of 20% sales tax on the ground of violation of Part XIII of the Constitution of India, more particularly, Articles 301 and 304(a) of the Constitution of India. However, the challenge was negatived by the Taxation Tribunal vide order dated 18.6.2003. Hence the above writ petition seeking to declare the impugned provisions ultra vires of the Constitution.

7. M/s MPL Cars Limited is the petitioner in W.P.Nos.23198 to 23201 of 2003. It is a registered dealer under the provisions of the TNGST Act and CST Act and is an assessee on the file of the Commercial Tax Officer, T.Nagar (East) Assessment Circle, Chennai. According to the petitioner, it is carrying on the business as authorised dealers of M/s Ford India Private Limited and selling Ford cars from the year 1996. Initially the petitioner used to effect purchase of Ford cars from the Nasik factory and thereafter, sales were made from the Chennai stockyard. From December, 2001 onwards, the petitioner also began to effect sale of Ford Mandeo cars, which are manufactured in Ford Werks AG, Belgium. M/s Ford India Private Limited used to import the cars from Belgium and effect high sea sales to the petitioner before the goods could reach the Indian shores. On the goods arriving at Mumbai port, M/s Ford India Private Limited used to clear the goods previously sold on high sea sale basis to the petitioner and despatch the goods to Tamil Nadu, for

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which the petitioner used to pay 13% entry tax. However, the petitioner did not collect any sales tax but set off the entry tax paid previously against the sales tax liability. On and from 27.3.2002, the petitioner also collected and paid sales tax under the TNGST Act at the rate of 12%. Though the petitioner had been collecting 20% sales tax from the customers, it used to pay to the department only 7% namely, the difference between the sales tax rate at 20% and entry tax rate at 13%. By the introduction of Tamil Nadu Act 22 of 2002, the petitioner is made liable to pay 20% sales tax on the cars sold by it in Tamil Nadu. Questioning the said levy, the petitioner approached the Tamil Nadu Taxation Special Tribunal by filing O.P.Nos.813 & 814 of 2002 praying to declare the provisions contained in Entry 14(vi) of Part-D of the First Schedule to the TNGST Act as classifiable under Entry 8 of Part-G of the First Schedule to the said Act during the period from 27.3.2002 to 30.6.2002, introduced by Tamil Nadu Act No.18 of 2002, and as classifiable under Entry 9 of Eleventh Schedule of the said Act with effect from 1.7.2002, introduced by Tamil Nadu Act No.22 of 2002, prescribing 20% rate of sales tax on the sale of cars in Chennai are ultra vires of Articles 14, 265, 286 and Part XIII of the Constitution of India. By order dated 30.4.2003, the Taxation Tribunal upheld the provisions of levy of higher rates of sales tax at 20%. Challenging the said order, the above writ petitions have been filed seeking to set aside the order of the Taxation Tribunal and for a consequential declaration to declare the impugned provisions ultra vires of the Constitution.

8. The petitioner in W.P.No.24476 of 2005 is the proprietor of M/s Mahaveer Mirror Industries, Chennai and is an assessee under the provisions of the TNGST Act on the file of the Commercial Tax Officer, Vepery, Chennai. According to the petitioner, he is carrying on the business in glass and mirrors, fibre boards of different types including medium density fibre board. He imports goods from outside India and sell them in the local market. According to him, medium density fibre boards and pre-laminated/veneered medium density fibre boards are taxable only at the rate of 8% from 1.4.99 to 26.3.2002 and 10% from 27.3.2002 under item 20 Part-C of the First Schedule of the TNGST Act. As the goods covered under Entry 8, Part-G of the First Schedule upto 30.6.2002 and Entry 9 of the Eleventh Schedule from 1.7.2002 under the impugned provisions are taxable at a higher rate of sales tax and the medium density fibre board which is taxable at 10% under Part-C of First Schedule has been included along with those imported goods, the petitioner has filed the above writ petition seeking to declare the impugned provisions invalid, illegal, unconstitutional and ultra vires of the Constitution.

9. M/s Theni Glass House, Theni is the petitioner in W.P.No.2597 of 2004 and is an assessee under the provisions of the TNGST Act on the file of the Commercial Tax Officer, Theni. According to the petitioner, during the course of business, it is importing medium density fibre boards from foreign countries and reselling all kinds of glasses and plywoods. On similar grounds, the petitioner seeks to quash the impugned Government Order in G.O.Ms.No.29 Commercial Taxes dated 27.3.2002 so far as the levy of sales tax at 20% on the goods

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imported by the petitioner is unconstitutional and illegal.

10. Mr.Arvind P.Datar, learned senior counsel appearing for the petitioner in W.P.Nos.17424 and 17425 of 2003 has submitted that once the goods reached the customs frontiers, they are assessed for customs duty and thereafter bill of entry is filed. After payment of customs duty, the goods are cleared and are removed from the port and stored in warehouses. Once the goods are cleared from port on payment of customs duty, they lose the character of imported goods. After clearance and storage of the goods in the warehouse, the petitioner effects stock transfer from the warehouse to the State of Tamil Nadu for sale. According to the learned senior counsel, for the purpose of levy of sales tax, the goods should suffer tax as classified under Entry 14(vi) and (viii) of Part-D of First Schedule of the TNGST Act at the rate of 12% only. Only such of those imported goods falling under Part-D of the First Schedule classified under Entry 9 of Eleventh Schedule are liable to tax at the rate of 20% on the first sales inside the State of Tamil Nadu. He would further submit that inasmuch as the goods are stock transferred from Delhi to Tamil Nadu, they are goods lying in India and are not goods in the course of import into India. It is his further contention that inasmuch as Entry 9 of Eleventh Schedule does not spell out clearly the connotation of the term of 'imported goods', by a clarification dated 21.7.2002 issued under Section 28-A of the TNGST Act by the Special Commissioner and Commissioner of Commercial Taxes, the goods imported by the petitioner cannot be taxed at the rate of 20%, as those goods should suffer 12% sales tax as per Entry 14(vi) and (viii) of Part-D of the First Schedule.

11. Mr.K.J.Chandran, learned counsel appearing for the petitioner in W.P.Nos.16825 and 16826 of 2003 has adopted the arguments of Mr.Datar. Similarly, Mr.N.Murali, learned counsel appearing for the petitioner in W.P.No.22414 of 2003 also adopted the arguments of Mr.Datar.

12. Mr.N.Saiprakash, learned counsel appearing for the petitioner in W.P.Nos.23198 to 23201 of 2003 has submitted that Entry 8 of Part-G of the First Schedule to the TNGST Act was applicable for the period from 27.3.2002 to 30.6.2002. On and after 1.7.2002, the Eleventh Schedule is made applicable. He would contend that the finding of the Taxation Tribunal that protection under Part XIII of the Constitution of India for free trade is not available to the imported goods is contrary to law. He would also submit that in any case when there is a discrimination in the tax pattern as to the restrictions in the enactment, the assent of the President under Article 304-B of the Constitution of India for such enactment is necessary.

13. Mr.T.V.Lakshmanan, learned counsel appearing for the petitioner in W.P.No.24476 of 2005, in addition to the above submission of Mr.N.Saiprakash, has also placed reliance on certain clauses of the General Agreement on Tariffs and Trade, 1994, shortly known as (GATT) and submitted that there cannot be a different rate of sales tax for the goods manufactured and sold within India in a

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particular State or manufactured in one State and sold in another State and the goods imported and sold in India. According to the learned counsel, the discrimination in the tax structure would amount to infringement of the right under Part XIII of the Constitution and, particularly, the freedom of trade, commerce and intercourse enunciated under Article 301 of the Constitution of India.

14. Mr.A.Thiyagarajan, learned counsel appearing for the petitioner in W.P.No.2597 of 2004 has submitted that while the power of the State Legislature to levy tax cannot be disputed, it cannot impose two different rates of tax for the goods sold within the State, as the same would amount to discrimination. He would also submit that once the goods suffer customs duty and are cleared from the port, they lose the character of imported goods and therefore, it cannot be differently treated with the goods manufactured in India. He would draw our attention to Article 286(3) of the Constitution relating to the restrictions as to the levy of tax on the sale or purchase of goods in the State.

15. Refuting the above submissions, Mr.P.S.Raman, learned Additional Advocate General appearing for the State has submitted that the right of the State to levy sales tax on the sale or purchase of goods within the State of Tamil Nadu is covered by Entry 54 of List II of the Seventh Schedule read with Articles 245 and 246 of the Constitution of India and such power includes a power to levy tax on the goods based on 'intelligible differentia and reasonable classification'. He would also submit that so far as the contentions as to the infringement of Articles 301 to 304 of Part XIII of the Constitution of India are concerned, those Articles are intended to ensure that no State Government would discriminate so as to impede goods of other States a free movement to any other State and they are not intended as protection for free movement of foreign goods. So far as the submission as to the India's Trade obligation under GATT is concerned, he would submit that those obligations should be only taken note of as India's obligation under the treaty and if no conflicts with any municipal law, the latter law alone will prevail.

16. On consideration of the sum and substance of the pleadings and the rival contentions, the following points arise for our consideration:

> (i) Whether the imported goods, on sufferance of customs duty and subsequently cleared from the customs frontiers, would lose its character as foreign goods for the purpose of levy of sales tax under the provisions of the TNGST Act?
> (ii) Whether the levy of 20% sales tax on imported goods by the amended provision as against the levy of 12% sales tax for the goods manufactured in India would be discriminatory in the wake of Articles 301 to 304 of the Constitution?
> (iii) Whether by virtue of the Agreement (GATT), the State would be competent to bring the goods

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imported and levy higher rates of sales tax and in such circumstances, whether such enactment would require the assent of the President under Article 304(b) of the Constitution of India?

17.Point Nos.(i)&(ii): In order to drive home the above points, Mr.Arvind P.Datar, learned senior counsel would firstly rely upon the judgment of the Andhra Pradesh High Court in Minerals and Metals Trading Corporation v. State of Andhra Pradesh (1998) Vol.110 STC 394 (AP) and submit that once an assessment is made and on filing of the bill of entry the goods are cleared, the goods get mingled with the general mass of goods and merchandise of the country and the goods get the eligibility to be declared as local goods after clearance. The same will be the position even if the goods are not physically removed from the port premises. It is his further contention that the goods attain the character of local goods and cease to be foreign goods. The question that arose for consideration before the Andhra Pradesh High Court in that case was the interpretation of Section 5 (2) read with Section 2(ab) of the CST Act, which contemplates that 'a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India and that crossing the customs frontiers of India shall mean crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities'. The High Court was basically considering the expression 'crossing the customs frontiers of India' employed in Section 5(2) read with 2(ab) of the CST Act. When the assessee in that case claimed that it has imported goods from foreign parties and has transferred the bill of lading in favour of the local buyers before the customs clearance of goods is effected, they are sales in the course of import under the second limb of Section 5(2) read with 2(ab) of the CST Act. The said claim was disallowed by the Commercial Tax Officer holding that the crucial date for determining the exemption was the date of arrival of the vessel and even in the cases where date of arrival of the vessel is subsequent to the date of transfer of documents. In that case, the High Court came to the conclusion that irrespective of the fact whether duty is paid or not, when once the bill of entry is filed and the imported duty is assessed, then only the goods can cross the limits of the customs port, therefore, any transfer of documents of title before the clearance of the goods by the customs authorities on making the assessment of goods would amount to a sale in the course of import, as after the assessment is made and on filing of the bill of entry the goods get mingled with the general goods and merchandise of the country. Thereafter, the goods get the eligibility to be declared as local goods after clearance even though they are not physically removed from the port premises and they attain the character of local goods and cease to be foreign goods. The said judgment cannot be made applicable to the facts of the present cases, which question the power of the State to levy sales tax on imported goods. The question before the Court basically was as to when the goods can be said to have crossed the customs frontiers. The judgment

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also arose under the Customs Act. The relevant consideration for the purpose of levy of sales tax is as to whether even after the customs clearance, such goods lose their character or identity of 'imported goods'. In our view, that judgment cannot be made applicable to the facts of the present case relating to the power of the State to levy sales tax on the goods sold in the State.

18. The learned senior counsel would further rely upon yet another judgment of this Court in State Trading Corporation of India Ltd. v. State of Tamil Nadu and another (Vol.129 STC 294). Again that was a case relating to the consideration of the goods 'crossing the customs frontiers'. In fact the interpretation set out in the judgment of the Andhra Pradesh High Court in Vol.110 STC 394 was considered and this Court did not agree with the said interpretation on 'crossing customs frontiers'. The Court held that the 'goods imported by the assessee had been warehoused and the clearance for home consumption was made under Section 68 of the Customs Act, 1962 after the title to the goods had been transferred to the buyer who paid the duty and removed the goods out of the customs station and the crossing of limits of the customs station took place after the clearance of goods from the warehouse for home consumption and therefore the sale effected by the assessee was in the course of import entitling exemption. Again that was a case relating to the goods said to have 'crossed the customs barriers'. That judgment arose under Customs Act also would not be applicable to the facts of the present case and is of no use to the petitioners.

19. The learned senior counsel also cited yet another judgment of the Bombay High Court in Bussa Overseas & Properties P.Ltd. v. C.L.Mahar, Asst.C.C., Bombay (2004 (163) ELT 304 (Bom.). The Bombay High Court was considering the scope of sub-sections (2) & (3) of Section 143 of the Customs Act relating to the power of the Assistant Collector of Customs to grant home clearance on execution of bond. While referring to sub-section (25) of Section 2 of the Customs Act, the Bombay High Court found that 'the goods lose its character of imported goods on being granted clearance for home consumption'. Again the said judgment is only for the purpose of levy of customs duty and has nothing to do with the levy of sales tax. That apart, in the very same judgment, the Bombay High Court observed that 'even if the goods lose its character of imported goods on being granted home consumption, the power vested in the officer to confiscate the goods where the order of clearance is revised and cancelled'. By the power of cancellation it can be validly presumed that the observation that the goods lose its character of imported goods on being granted clearance for home consumption is only for the purpose of levy of customs duty and in the event such levy of customs duty is thereafter revised or cancelled, the power to confiscate the goods is made available to the officer and therefore the submission that once the clearance of the goods lose its character of imported goods cannot be accepted. Further the contention that once the goods are cleared, they are not available for confiscation under Section 111 of the Customs Act was negatived for the reason that the power of confiscation is not dependent upon the availability of the goods. It must be held that for the purpose of levy of sales tax, an

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assessment, filing of bill of entry, clearance of goods from the customs frontiers are also not relevant, as they will be relevant only for the purpose of levy of customs duty and not otherwise.

20. The power of the Central Government to make law for levying customs duty is traceable to Entry 83 of List 1 of Seventh Schedule. On the other hand, the power of the State Government to make law for levying sales tax is traceable to Entry 54 of List II of Seventh Schedule. We must firstly mention that none of the petitioners questions the power of the State in making the law levying sales tax on goods brought and sold in the State, but only questions the different yardstick in fixing the tax pattern namely, that for the goods manufactured in one State and sold in other State and goods imported into India and sold in other State. Keeping in mind the above, the challenge to the impugned Acts and the clarification should be considered. The issue boils down to the narrow compass as to whether there could be a classification between the goods imported from other countries brought to one State and sold in other State and the goods manufactured in one State and sold in other State.

21. The Supreme Court in ELEL Hotels and Investments Ltd., & another v. Union of India (1989) Vol.74 STC 146 (SC) held that 'a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must needs be so, having regard to the complexities involved in the formulation of Taxation Policy. Taxation is not now a mere source of raising money to defray expenses of Government. It is a recognised fiscal tool to achieve fiscal and social objectives'.

22. While considering the validity of taxing statutes, the Supreme Court in the judgment in Vivian Joseph Ferreira and another v. The Municipal Corporation of Greater Bombay and others (1972 (1) SCC 70) has observed as follows:-

> "14. The question of validity of taxing statutes has arisen before this Court in a number of cases. The principle emerging from them is that in order that a tax may be valid, it is firstly, within the competence of the Legislature imposing it, secondly, that it is for a public purpose, and thirdly, that it does not violate the fundamental rights guaranteed by Part III of the Constitution. The taxing statute is as much subject to Article 14 as any other statute. *[K.T.Moopil Nair v. Kerala (AIR 1961 SC 552), Raja Jagannath v. U.P., (AIR 1962 SC 1563), East India Tobacco Co. v. Andhra Pradesh (AIR 1962 SC 1733), Khandige Sham Bhatt v. Agricultural Income Tax Officer (AIR 1963 SC 59) and Andhra Pradesh v. Nalla Raja Reddy (AIR 1967 SC 1458)].* But in view of the inherent complexity of fiscal adjustment of diverse elements a larger discretion has to be permitted to the Legislature for classification so long as there is no

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transgression of the fundamental principles underlying the doctrine of classification. (*Cf.Khandige Sham Bhatt v. Agricultural Income Tax Officer (supra)*. These principles are that the classification must be based on an intelligible differentia which distinguishes persons or object grouped together from others left out of the group, and that differentia must have a rational nexus with the object of the statute. So long as these principles are properly followed in classifying persons or objects for taxation, the power to classify must be wide and flexible so as to enable the Legislature to adjust its system of taxation in all proper and reasonable ways. (*See Khandige Sham Bhatt v. Agricultural Income Tax Officer (supra)*.

15. It is well settled that a Legislature does not have to tax every thing in order to tax something. It can pick and choose districts, objects, persons, methods and even rates of taxation as long as it does so reasonably. (*Willis, Constitutional Law of the United States, 587)*..... When a statute divides the objects of tax into groups or categories, so long as there is equality and uniformity within each group, the tax cannot be attacked on the ground of its being discriminatory..... Likewise, the mere fact that a tax falls more heavily on some in the same group or category is by itself not a ground for its invalidity, for them hardly any tax, for instance, sales tax and excise tax, can escape such a charge. (*Twyford Tea Co.Ltd. v. State of Kerala (AIR 1970 SC 1123)*."

23. A conspicuous reading of the law laid down by the Court would show that (i) the power of the State to levy sales tax on goods brought and sold in the State is traceable to Entry 54 of List II of Seventh Schedule; (ii) that the State while making law levying tax has a wide latitude in the matter of classification of goods, (iii) that the levy of tax should not be violative of the fundamental rights guaranteed under Part III of the Constitution, (iv) that the classification should be on the basis of 'intelligible differentia' which has rationale object with the statute and (iv) that there should not be any discrimination in tax pattern between the same group or categories of goods.

24. The challenge to the impugned amended Act and the clarification levying different/higher rate of sales tax for the goods imported from outside the country would be discriminatory and violative of Article 14 of the Constitution of India should be considered. The thrust of argument based upon the violation of Article 14 is that once the imported goods are cleared from the port on payment of customs duty, they lose the character of imported goods

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as they mingle with the domestic goods. The payment of customs duty is by virtue of the provisions of the Customs Act as, without such payment, the imported goods cannot be allowed to be cleared for local consumption. The power to levy customs duty, which vests with Central Government, cannot in any way curtail the power of the State Government to levy sales tax. Of course, it is not the argument of the respective learned counsel that the State has no such power, as the question is only the levy of higher rate of sales tax. Even though the imported goods once cleared from customs they get mingled with other goods, it is common knowledge that such goods cleared from customs do not lose their identity as foreign goods. Imported goods shall form a distinct and separate class by themselves. The principles of doctrine of classification are well accepted by the Courts in our country. Article 14 of the Constitution of India though forbids class legislation, but it does not forbid reasonable classification for the purpose of legislation. However, such reasonable or permissible classification must fulfill two conditions namely, (i) that the classification must be founded on an intelligible differentia which distinguished persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, according to the objects or the like. If a higher rate of sales tax is imposed by the State keeping in view of the inherent complexity of physical adjustment of diverse elements, such decision to levy higher rate of sales tax should be considered to be one of larger discretion available to the legislature in the matter of classification.

25. It has been also well settled that taxation law cannot be claimed immunity from the equality class of the Constitution and the taxation statutes shall not also be arbitrary and oppressive, but at the same time the Court cannot for obvious reasons meticulously scrutinise the impact of its burden on different persons and its interest. In M/s East India Tobacco Co., etc., v. State of Andhra Pradesh (AIR 1962 SC 1733), the Supreme Court had observed that "where there is more than one method of assessing tax and the legislature selects one out of them, the Court will not be justified to strike down the law on the ground that the legislature should have adopted another method, which in the opinion of the Court is more reasonable, unless it is convinced that the method adopted be capricious, fanciful, arbitrary or clearly unjust". While broadlining the power of the Court to interfere with the legislation on the ground of discrimination, the Supreme Court in Ram Krishna Dalmia v. Justice S.R.Tendolkar (AIR 1958 SC 538) had observed as follows:-

> "A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no

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> classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself."

By a majority, the above law was accepted by the Supreme Court in the subsequent judgment in Kunnathat Thathunni Moopil Nair v. State of Kerala (AIR 1961 SC 552). The legislature has obviously thought to levy higher rate of sales tax keeping the classification which is reasonable and based on 'intelligible differentia' and such classification cannot be held to offend Article 14 of the Constitution of India.

26. That apart, when the discrimination on the ground of hostile unequal treatment is pleaded, the burden of proving such discrimination is always heavy and heavier still when a taxing statute is under attack on the person complaining of discrimination. This dictum of law was stated by the Supreme Court of United States in Madden v. Kentucky (1940) 309 US 83 as follows:-

> "In taxation even more than in other fields, legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

The above dictum of the United States Supreme Court was approved by the Supreme Court of India in the judgment in The Twyford Tea Co.Ltd., and another v. The State of Kerala and another (AIR 1970 SC 1133). The petitioners have raised the issue of discrimination only on the ground that the imported goods will lose their character as imported goods once if they are cleared from customs and therefore there cannot be a further classification between the imported goods and indigenous goods. The said submission is totally a misconception. Though the imported goods after removal may mingle with the indigenous goods, they never lose their identity as either imported goods or foreign goods. The petitioners have not discharged their burden while pleading discrimination.

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27. The law on the power of the State Government to validly pick

and choose one commodity for taxation and it was not open to attack under Article 14 was stated in East India Tobacco Company Ltd. (supra). In the same case, the Supreme Court has also held that the power indicates a wide range of selection and freedom in appraisal not only in the object of taxation and the manner of taxation, but also in the discrimination of rate or rates applicable.

28. Learned counsel for the petitioners had vehemently contended that the imposition of different/higher rate of sales tax on the imported goods is violative of Part XIII of the Constitution, more particularly, infringes the right to freedom of trade, commerce and intercourse. They would rely upon the following series of decisions in support of their contention.

(i) Atiabari Tea Co.Ltd. v. State of Assam and others (AIR 1961 SC 232);
(ii) Automobile Transport (Rajasthan) Ltd., etc. v. State of Rajasthan and others (AIR 1962 SC 1406);
(iii) Jindal Stainless Ltd., and another v. State of Haryana and others (2006) Vol.145 STC 544 (SC);
(iv) West Bengal Hosiery Association and others v. State of Bihar and another (1988) Vol.71 STC 298 (SC);
(v) Shree Mahavir Oil Mills and another v. State of Jammu and Kashmir and others (1997) Vol.104 STC 148 (SC); and
(vi) B.R.Enterprises v. State of U.P. and others (2000) Vol.120 STC 302 (SC).

29. In all these cases, the Supreme Court had considered the validity of some of the provisions with reference to the challenge based on the right to freedom of trade, commerce and intercourse as enunciated in Part XIII of the Constitution of India. The object of Part XIII of the Constitution is stated in *Atiabari's case* and followed in all the subsequent judgments as follows:-

> "In drafting the relevant Articles of Part XIII the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal polity which had been adopted by the Constitution for the governance of the country. Political freedom which had been won, and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. It was realised that in course of time different political parties believing in different economic theories or ideologies may come in power in the several constituent units of the Union, and that may conceivably give rise to local and regional pulls and pressures in economic matters. Local or regional fears or apprehensions raised by local or regional problems may persuade the State Legislatures to adopt remedial measures intended solely for the protection of regional interests

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> without due regard to their effect on the economy of the nation as a whole. The object of Part XIII was to avoid such a possibility. Free movement and exchange of goods throughout the territory of India is essential for th economy of the nation and for sustaining and improving living standards of the country. The provision contained in Art.301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character; it is not also a mere statement of a directive principle of State policy; it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country."

In all these cases, the tax was imposed on the goods manufactured in one State and moved into other State for sales. On the above undisputed facts, the Supreme Court held that there must be uniformity in tax pattern.

30. Whether Part XIII could be made applicable to imported goods is a further question for consideration in this case. Part XIII of the Constitution relates to the restriction on inter-State and intra-State trade on goods. Inter-State trade would mean where the goods manufactured in a State are sold in the same State. Equally, an intra-State trade would mean only such of those goods manufactured in one State and sold in other State/States. So long as the movement of goods within the State or from one State to another is not restricted, Part XIII of the Constitution cannot be pressed into service. In the given case, there is no restriction on goods from one State to another. By virtue of the power the State had classified the goods for the purpose of levy of sales tax. Heavy reliance was also placed on a Division Bench judgment of this Court in Indian Sugar & General Industry Export Import Corporation Ltd., v. Commercial Tax Officer and others (2002) Vol.127 STC 339) to contend that there cannot be any distinction between imported and indigenous goods. That was a case where this Court had dealt with the imported sugar. The Division Bench considered the word "imported" found in item (viii) of Section 14 of the Central Sales Tax Act does not result in the declaration with regard to sugar being confined only to sugar which is produced domestically. The Court had taken note of the fact that sugar falling within the scope of the sub-headings of the Central Excise Tariff Act and referred to in item (viii) of Section 14 of the Central Sales Tax Act would be declared goods, irrespective of the place of their manufacture. The question before the Division Bench was when once the goods are treated as declared goods, whether there could be a further distinction as to the indigenous or imported goods for the purpose of levy of tax. The criteria of distinction for levying higher rate of tax is whether the goods imported from the other country lose its identity as foreign

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goods or not. In the given case, the goods are television sets, audio systems, handy cameras, handsets of cellular phones, cars, medium density fibre boards, etc., and even after their import, they did not lose their respective identity. However, in the case of sugar, even after the sugar is imported, it is not sold in the market as imported sugar and it is possible for the trader to mix the imported sugar with the indigenous manufactured sugar as well. On the facts of the present case, we do not find that the said judgment would be of any use to the petitioners. For these reasons, we are of the considered view that Part XIII of the Constitution would not be applicable to imported goods. That apart, the impugned amendment Act fixing higher rate of tax for imported goods is on intelligible differentia and on the basis of reasonable classification and therefore we do not find any reason to hold that either the impugned Act is violative of Article 14 or the imposition of higher rate of sales tax for imported goods would in any way amount to restriction of trade under Part XIII of the Constitution of India. Equally the submission as to the impugned Act requires the assent of the President under Article 304(b) also cannot be accepted. Further, as the classification is reasonable, the submission as to the restriction for levy of tax on sale or purchase of goods based on Article 286(3) is also not available to the petitioners. Accordingly, point nos.(i) & (ii) are answered.

31. Point No.(iii): Mr.T.V.Lakshmanan, learned counsel placing reliance on certain clauses of the GATT agreement submitted that India is a signatory to the above agreement and the object of the above agreement would also include recognising the relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods. The learned counsel would submit that in view of the above agreement, there cannot be a different tax pattern in respect of imported and indigenous goods.

32. The Supreme Court in Magambhai Ishwarbhai Patel v. Union of India and another (AIR 1969 SC 783) has held as follows:-

> "25. A treaty really concerns the political rather than the judicial wing of the State. When a treaty or an award after arbitration comes into existence, it has to be implemented and this can only be if all the three branches of Government to wit the Legislature, the Executive and the Judiciary, or any of them, possess the power to implement it. If there is any deficiency in the constitutional system it has to be removed and the State must equip itself with the necessary power. In some jurisdictions the treaty or the compromise read with the Award acquires full effect automatically in the Municipal Law, the other body of Municipal Law notwithstanding. Such treaties and awards are 'self-executing'.

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> Legislation may nevertheless be passed in aid of implementation but is usually not necessary."

The Supreme Court in Gramophone Company of India Ltd., v. Birendra Bahadur Pandey and others (AIR 1984 SC 667) has held as follows:-

> "5. There can be no question that nations must march with the international community and the Municipal law must respect rules of International law even as nations respect international opinion. The comity of Nations requires that Rules of International law may be accommodated in the Municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. But when they do run into such conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. Comity of nations or no Municipal law must prevail in case of conflict. National Courts cannot say 'yes' if Parliament has said no to a principle of international law. National Courts will endorse international law but not if it conflicts with national law. National courts being organs of the National State and not organs of international law must perforce apply national law if international law conflicts with it. But the Courts are under an obligation within legitimate limits, to so interpret the Municipal Statute as to avoid confrontation with the comity of Nations or the well established principles of International law. But if conflict is inevitable, the latter must yield."

33. In view of the above law declared by the Supreme Court, we are of the considered view that merely because the GATT agreement recognises the relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, etc., that will not in any way curtail the State Government to identify the imported goods as separate class and to levy higher rate of sales tax so long as the power of the State Government to levy sales tax even on imported goods is not questioned. Accordingly, point no.(iii) is also answered.

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34. For the foregoing reasons, we do not find any merit in the challenge to the impugned Act, the clarification and the impugned

orders of the Taxation Tribunal. Accordingly, the writ petitions fail and they are dismissed. No costs. Consequently, the connected W.P.M.Ps. are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. THE SECRETARY TO GOVT.OF TAMIL NADU,
DEPARTMENT OF COMMERCIAL TAXES AND RELIGIOUS
ENDOWMENTS FORT ST. GEORGE,CHENNAI 9.

2. THE REGISTRAR,
TAMIL NADU TAXATION SPECIAL TRIBUNAL CHENNAI
SINGARAVELAR MALIGAI,RAJAJI SALAI,CHENAI 1.

3. THE SECRETARY TO GOVT.,
COMMERCIAL TAXES DEPARTMENT,
FORT ST. GEROGE, CHENNAI -9.

4. THE COMMERCIAL TAX OFFICER,
EGMORE -II, ASSESSMENT CIRCLE,
SPUR TANK ROAD, CHETPET,
CHENNAI 31.

5. THE COMMERCIAL TAX OFFICER,
ANNA SALAI-III ASSESSMENT CIRCLE, "SIRE MANSON",
621, ANNA SALAI, CHENNAI 6.

6. THE COMMERCIAL TAX OFFICER,
NUNGAMBAKKAM, ASSESSMENT CIRCLE,
CHENNAI.

7. THE COMMERCIAL TAX OFFICER,
T.NAGAR EAST, ASSESSMENT CIRCLE,
CHENNAI -17.

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9. THE COMMECIAL TAX OFFICER,
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10. THE COMMERCIAL TAX OFFICER,
VEPERY,CHENNAI.

+4ccs to Mr.N.Inbarajan, Advocate Sr 56043
+2ccs to Mr.R.Raghavan, Advocate Sr 56160 & 56159
+5ccs to The Special Government Pleader Sr 56202 to 56208

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